

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

IN RE AIR CARGO SHIPPING SERVICES
ANTITRUST LITIGATION

MDL No. 1775

Master File No. 06-MD-1775 (JG)(VVP)

ALL CASES

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION TO AUTHORIZE
SECOND DISTRIBUTION OF THE AIR CARGO 2 SETTLEMENT FUNDS**

Plaintiffs respectfully submit this memorandum in support of their motion to authorize a second distribution of the funds from Plaintiffs' settlements with Defendants Société Air France, Koninklijke Luchtvaart Maatschappij N.V., and Martinair Holland N.V. ("Air France-KLM"); American Airlines, Inc. ("American"); Scandinavian Airlines System and SAS Cargo Group A/S ("SAS"); Japan Airlines International Co., Ltd. ("JAL"); All Nippon Airways Co., Ltd. ("ANA"); Cargolux International Airlines, S.A. ("Cargolux"); Qantas Airways Limited ("Qantas"); and Thai International Public Company, Limited ("Thai").

I. FACTUAL BACKGROUND

The Court has previously granted four motions to distribute settlement funds to class members:

1. Order authorizing the disbursement of Lufthansa net settlement fund and for reimbursement of certain expenses (ECF No. 1561; Aug. 25, 2011);¹
2. Order authorizing the distribution of the Air France-KLM, SAS, JAL, American, ANA, Cargolux, Qantas, and Thai settlement funds (the "Air Cargo 2" settlements) (ECF No. 1673; May 1, 2012) (ECF No. 1680, May 16, 2012);

¹ The Lufthansa Settlement was reached with a class of direct and indirect purchasers; the other settlements were reached with the direct purchaser class only.

3. Order authorizing distribution of the Lan/ABSA, British Airways, South African, Malaysia, Saudia, Emirates, El Al, and Air Canada settlement funds (the “Air Cargo 3” settlement fund) (ECF No. 1908, Sept. 25, 2013);
4. Order authorizing final distribution of the Lufthansa settlement fund (Jan. 4, 2013).

II. FIRST DISTRIBUTION OF THE AIR CARGO 2 SETTLEMENT FUND

In accordance with the Court’s order, GCG commenced distribution of \$117,007,022.02 for 1,627 claims submitted in the first Air Cargo 2 distribution. Supplemental Declaration of Jennifer M. Keough Re: Second Air Cargo 2 Distribution (“Keough Supp. Decl.”) at ¶ 3. When checks were left uncashed or returned as undeliverable, GCG attempted to contact these payees via telephone, email, or letter, and researched their information for updated addresses. *Id.* at ¶ 4. As a result of GCG’s efforts, a further \$69,504.93 was able to be reissued. *Id.*

III. THE REMAINDER OF THE AIR CARGO 2 SETTLEMENT FUND

GCG has calculated that the Net Settlement Fund contains \$9,674,582.24 ready for distribution.

Of this amount, \$21,616.58 results from uncashed checks, which are now stale-dated and void. *Id.* at ¶ 4.

Of the Net Settlement Fund, \$8,533,460.75 is being transferred from the Cargolux, ANA, and Qantas Citibank escrow accounts, after paying \$8,749.98 in fees to the escrow agent. *Id.* at ¶ 6. The third and final installment payment from Cargolux had not yet come due at the time of the initial distribution of the Air Cargo 2 funds. There also remained funds set aside in opt-out accounts from the Cargolux, ANA, and Qantas settlements, which were not included in the initial distribution. ECF No. 1668-1, p. 5. The deadline has now passed for each of these Defendants to

reach agreements with opt-out plaintiffs, and the funds from those opt-out accounts have reverted to the class. These funds include:

- \$193,788.96 from the ANA Opt-Out Escrow Account;
- \$6,476,254.43 from Cargolux's third and final payment to the class, and from funds reverting to the class from the Cargolux Opt-Out Escrow Account; and
- \$1,872,167.34 from the Qantas Opt-Out Escrow Account.

In addition, in the course of auditing for the Air Cargo 3 distribution, it was determined that a small number of claimants that had received payments from the Air Cargo 2 distribution had claimed certain ineligible purchase amounts. The award amounts associated with the ineligible claimed purchases were fully refunded back to the Settlement Fund and are now available for distribution, along with tax refunds received, together totaling \$1,236,763.53.

Keough Supp. Decl. at ¶ 5.

The settlement funds owe \$55,258.62 in fees to GCG for unpaid notice and claims administration costs, plus \$62,000 in estimated fees and expenses to complete administration of these accounts, including \$18,000 to cover the cost of tax preparation for the Cargolux, ANA, and Qantas Citibank accounts for tax years 2012, 2013, and 2014. *Id.* at ¶ 7.

Following these adjustments and including interest earned, the total settlement funds available for distribution at this time are \$9,674,582.24 (the "Net Settlement Fund").

Accounting of Air Cargo 2 Funds	
Cargolux	\$6,476,254.43
Qantas	\$1,872,167.34
ANA	\$193,788.96
Distr. Acct: Uncashed Checks	\$21,616.58
Distr. Acct: Refunds	\$1,236,763.53
Fees paid to Citibank (escrow agent)	(\$8,749.98)
Fees owed to GCG from past invoices	(\$55,258.62)
Estimated fees and expenses to GCG to complete administration and tax preparation	(\$62,000.00)
Total Funds Available for Distribution to Class Members	\$9,674,582.24

IV. RECOMMENDED SECOND DISTRIBUTION

The Net Settlement Fund will be allocated in accordance with the Plan of Allocation approved by the Court (ECF No. 1524). Class members who cashed their first distribution check and will receive a payment of more than \$5.00 will be included in this distribution. Keough Supp. Decl. at ¶ 8. The distribution will be made pursuant to the chart attached as Exhibit A to the Keough Supp. Decl., which shows information about each claimant's purchases, identifying claimants by numbers as opposed to names for purposes of confidentiality, and GCG's recommended allocation in accordance with the Plan of Allocation.

V. CONCLUSION

Plaintiffs respectfully request authorization to pay \$55,258.62 to Garden City Group from the Air Cargo 2 settlements, to hold back an additional \$62,000 in anticipated future fees and expenses to GCG, and to commence a second distribution to Air Cargo 2 claimants of the remaining balance of \$9,674,582.24, as set forth above and in Exhibit A to the Keough Supp. Decl.

Dated: February 28, 2014

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